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Attorneys for Plaintiff
CARDINAL HEALTH 110, INC. d/b/a
CARDINAL DISTRIBUTION

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CARDINAL HEALTH 110, INC., d/b/a
CARDINAL DISTRIBUTION, a Delaware
corporation,

Plaintiff,

vs.

AMG PHARMACY, INC., a California
corporation d/b/a MIKE'S MEDICAL
CENTER PHARMACY and RED
SQUARE PHARMACY; and LYUDMILIA
LYUSTIN, an individual;

Defendants.

CASE NO. CV 08-0788 JL

**MOTION TO CONTINUE MEDIATION
DEADLINE OR, IN THE
ALTERNATIVE, TO PERMIT
CARDINAL HEALTH 110, INC. D/B/A
CARDINAL DISTRIBUTION TO
ATTEND SCHEDULED MEDIATION BY
TELEPHONE**

MOTION TO CONTINUE MEDIATION DEADLINE OR, IN THE ALTERNATIVE,
TO PERMIT CARDINAL HEALTH 110, INC. D/B/A CARDINAL DISTRIBUTION
TO ATTEND SCHEDULED MEDIATION BY TELEPHONE

1 Plaintiff Cardinal Health 110, Inc. ("Cardinal") files this motion to continue the mediation
2 deadline currently set for September 9, 2008 to permit Cardinal to bring a motion for summary
3 judgment in the action or, in the alternative, to permit Cardinal to attend the scheduled mediation by
4 telephone (the "Motion") due to Defendants' repeated failures to participate meaningfully in this case
5 by, among other things, failing to attending court-ordered conferences and scheduled mediation
6 conference calls.

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8 Cardinal's counsel telephoned Defendants' counsel in order to ascertain whether Defendants
9 would oppose this Motion, but the telephone call was answered by a recorded message that stated that
10 Defendants' counsel's voicemail box was full and would not permit a message to be left. Cardinal's
11 counsel also sent an e-mail to Defendants' counsel requesting that he advise as to whether Defendants
12 would oppose this motion and Cardinal's counsel will notify the Court by supplemental pleading in the
13 event that Defendants' counsel responds and states whether Defendants' intend to oppose this motion.
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15 BACKGROUND

16 Cardinal filed this suit on February 4, 2008. Counsel for Cardinal and Defendants discussed
17 settlement during their Rule 26 conference; however, counsel for Defendants failed to follow-through
18 with providing documents they had agreed to produce in order to substantiate certain claims respecting
19 their assets.
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21 On May 14, 2008, the court held a case management conference but Defendants' counsel did
22 not appear at the scheduled conference. The Court continued the case management conference to May
23 28, 2008 and ordered Defendants to serve Cardinal with initial disclosures by May 20, 2008.
24 Defendants did not appear for the May 28, 2008 case management conference. On May 28, 2008, the
25 Court again continued the case management conference to June 11, 2008 and entered an order
26 requiring Defendants to attend the June 11, 2008 conference in person and to serve initial disclosures
27 within one week of the May 28, 2008 Order. Defendants' counsel attended the case management
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1 conference in person on June 11, 2008, but Cardinal still has not received Defendant's initial
2 disclosures.

3 On July 10, 2008, counsel for Cardinal participated in a scheduled pre-mediation
4 teleconference with Daniel Sharp, the court-appointed mediator in this case. Defendants' counsel did
5 not call in at the scheduled time, and the mediator rescheduled the pre-mediation telephone conference
6 call for later that afternoon. Defendants' counsel represented that he would provide, within one week,
7 certain documents to substantiate Defendants' claims respecting their assets. Defendants failed to
8 provide the documents and failed to attend another scheduled pre-mediation conference call with the
9 mediator on July 18, 2008 – a pre-mediation call which Defendants' counsel had requested. The
10 mediator set the mediation for this case for September 4, 2008. To date, Defendants have not provided
11 any of the documents they have repeatedly agreed to provide which are necessary for Cardinal to
12 evaluate settlement options.
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15 THE DEADLINE BY WHICH TO COMPLETE MEDIATION SHOULD BE CONTINUED TO
16 PERMIT CARDINAL SUFFICIENT TIME TO FILE A MOTION FOR SUMMARY JUDGMENT
17 THAT MAY RESOLVE THE ACTION AND HAVE THAT MOTION TO BE HEARD

18 Based on the merits of Cardinal's claims and the apparent lack of any defenses of Defendants,
19 Cardinal intends to move for summary judgment by no later than August 29, 2008 and to request a
20 hearing date in October 2008 or as soon as the Court's calendar permits. Cardinal has attempted many
21 times to resolve this case by settlement, but Defendants and/or their counsel have not meaningfully
22 participated in these discussions. Cardinal believes that that this case can be efficiently and
23 economically resolved at a hearing on a motion for summary judgment and, therefore, requests an
24 opportunity to file a motion for summary judgment and have it heard prior to incurring further costs
25 and attorneys' fees in connection with mediation, particularly in light of Defendants' past conduct in
26 connection with the mediation and court ordered conferences. Specifically, Cardinal requests that
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mediation deadline be continued to a date after October 31, 2008 or later, depending upon the Court's availability for a hearing on a motion for summary judgment in October.

IN THE ALTERNATIVE, CARDINAL AND ITS ATTORNEYS SHOULD BE
PERMITTED TO ATTEND THE MEDIATION CURRENTLY SCHEDULED FOR SEPTEMBER 4,
2008 MEDIATION BY TELEPHONE

Because of Defendants' and/or their counsel's failure to participate meaningfully in this case by, *inter alia*, by not appearing for Court ordered conferences or the pre-mediation telephonic conferences, Cardinal requests, at a minimum, that both Cardinal and its counsel be permitted to attend the September 4, 2008 mediation by telephone. Cardinal incurs legal fees and expenses in this case every time Defendants fail to attend conferences or otherwise comply with their duties as litigants. Cardinal has repeatedly demonstrated that it is open to settlement of this case and will be fully attentive, responsive and engaged by telephone in any mediation attended by Defendants. Accordingly, if the Court declines to grant Cardinal's motion to continue the mediation deadline, then Cardinal respectfully requests that Cardinal's corporate representative and its counsel be permitted to attend the scheduled mediation by telephone.

DATED: August 19, 2008

Respectfully submitted,

By: /s/ Kathleen DeVaney

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